IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE

CRIMINAL APPEAL NO.248 OF 2000

1. Keshav Asaram Bansode.
Age 22 years. Occ. Business,
R/o. Morimata Hutment,
Panchavati, Nashik.

2. Rajendra Narayan Sonawane,
Age 23 years, Occ. Labour,
Charoskar Chawl, Phule Nagar,
Panchavati, Nashik.

3. Khandu Dhondiram Dhongade,
Age 27 years, Occ. Labour,
Walmikinagar, Panchavati,
Nashik.

4. Shantaram Deoram Gurgude,
Age 18 years, Occ. Labour,
Saikrupa Hotel, Gangadhat,
Panchavati, Nashik.

....Appellants.
(Org. Accused)

Vs.

The State of Maharashtra.
(At the instance of P.S.O.,
Panchavati Police Station,
Nashik.)

....Respondent.
(Org. Complainant)

Mr. Naveen Chomal, Advocate for the Appellants.

Mr. B.H. Mehta, APP for the Respondent.

CORAM : R.M. LODHA AND
R.S. MOHITE, JJ.

DATED : 9TH FEB.,2005

ORAL JUDGMENT : (Per R.S. MOHITE, J.)

. This appeal has been filed by the appellants (original accused Nos. 1 to 4) for quashing and setting aside the judgment and order passed by the Additional Sessions Judge, Nashik on 15.1.2000 in Sessions Case No.47 of 1999. By the said judgment and order the Trial Court has convicted the accused Nos. 1 to 4 for offences punishable under Section 302 read with 34 of the Indian Penal Code and has sentenced them to under go imprisonment for life and to pay a fine of Rs.1000/- each. In default of payment of fine, the accused have been further sentenced to under go simple imprisonment of one month each. The accused no.1 has also been convicted for the offence punishable under Section-135 of the Bombay Police Act, but as he has been convicted under Section-302 of the Indian Penal Code, no separate sentence has been passed on this count.

2. The brief facts of the prosecution case are as follows:

a) That, the accused No.1 Keshav Asaram Bansode and the deceased Pappu Patil were staying in the same locality (in different slums). There was previous enmity between the deceased and accused No.1. That, on 26.5.1998 a complaint has been lodged by deceased Pappu Patil's wife Sunita against accused Keshav and the police had recorded an N.C. in this regard. Similarly another N.C. has been recorded by the police on a complaint lodged by the accused No.1's wife Pushpa against the deceased Pappu Patil.

b) The present incident took place at about 5.00p.m. on 17.12.1998. On that day, P.W.No.1 Chandrakala was in the house. Deceased Pappu Patil came to the house of P.W.No.1 Chandrakala with whom he was acquainted. He requested her for cup of tea which was served by Chandrakala. According to Chandrakala at that time accused No.1 Keshav came there and looked into her house and then went away. Deceased Pappu then left her house saying that he was going to meet Ratnaparkhi and Gaikwad. After some time, one Asha Khakodiyabai came to her house and informed her that Pappu was being severely beaten. She therefore, left her work in her house

and went outside. She saw that Pappu was being assaulted at some distance from her house and in front of the house of one Gaikwad. Her son Sanjay (P.W.4) was with her. She saw all the four accused assaulting the deceased Pappu Patil. She went to intervene in the quarrel and accused No.1 Keshav abused her in filthy language. At that point of time, accused No.1 Keshav took out a sword stick from the wooden covering handle and stabbed deceased Pappu 2 to 3 times. The medical evidence indicates that the deceased Pappu received the following external injuries.

1) Stab injury on chest over left 5th intercostal space in left mid clavicular line, oblique of 2cm.x 1cm. x deep into left thoracic cavity. Elliptical appearance, clean cut margins with clotted blood.

2) Stab injury on chest in mid-line over sternum, just above Xiphisternum of 2 cm. x 1 cm. x deep into left thoracic cavity, oblique, elliptical appearance, clean cut margin with clotted blood present.

3) Stab injury over Xiphisternum 2 cm. x 1 cm. x deep into left thoracic cavity, elliptical appearance with clean cut margins, clotted blood present.

4) Stab injury over right Hypochen dirac region in right mid clavicular line, oblique, 2 cm. x 1 cm. x deep into abdominal cavity, elliptical appearance, with clean cut margins, clotted blood present.

5) Stab injury over right hypochondriac region in 6th intercostal space, midclavicular line 2 cm x 1.4 cm. x deep into right thoracic cavity, elliptical appearance clean cut margins, clotted blood present.

6) Stab injury right side chest in 5th inter costal space, mid clavicular line 2 cm. x 1.5 cm. x deep into right thoracic cavity, elliptical appearance clean cut margins, clotted blood present.

7) Lacerated wound 3 cm. x 1/4th x 1/2 cm. at right nasolabial fold with blood clots present.

8) Contused lacerated wound 3 cm x 1/2 cm. x1/2 cm. over lower lip inner side with blood clots present.

c) On internal examination, it was found that the chest wall underneath injury Nos.1,2,3,5 and 6 was clean cut. The sternum and Xiphisternun underneath injuries 2 and 3 was clean cut. The pelura under injury Nos. 1,2,5 and 6 was also clean cut. There was an incised penetrating injury over middle lobe of right lung. There was a penetrating injury over the upper lobe frontal aspect. Heart showed two incised penetrating injuries. The abdominal wall was clean cut under injury Nos. 4 and 5 and the diaphram was also clean cut underneath injuries 3 and 5. There was also a clean cut injury to the peritoneum below injury Nos. 4 and 5. There was injury to the small intestine, ileum and to the liver. The cause of death was haemorrhagic shock due to multiple stab injuries.

d) That, on seeing the incident

P.W.1-Chandrakala immediately rushed to the police station and informed the police about the incident. The Police recorded her F.I.R. (Exh.18) and obtained her thumb impression under the same. Before leaving the police station, P.W.1 Chandrakala had sent her son Sanjay to fetch the father of the deceased Pappu. P.W.1 then returned from the spot of the offence alongwith the police and by that time Sanjay had returned to the spot. Deceased Pappu was found to have expired on the spot.

e) P.W.11 Police Inspector Vasant Ashar was then attached to Panchvati Police Station and he was the Police Officer who registered the Crime No.377 of 1990 on the complaint of P.W.1 Chandrakala. The F.I.R. was recorded by him at 5.45p.m. He visited the spot alongwith Chandrakala after recording F.I.R. On reaching the spot, he prepared an Inquest panchanama (Exh.30). He recorded statements of some witnesses including P.W.2 Sanjay. He found that accused was absconding. On 18.12.1998, he again went to the spot and prepared a spot panchanama (Exh.34). He drew hand sketch relating to the spot of the offence (Exh.44). He arrested two of the accused i.e. accused No.2-Rajendra and accused No.3-Khandu under panchanamas (Exh.26 and Exh.27).

He attached the clothes of the deceased under a panchanama (Exh.28). He sent the arrested accused to the Civil hospital with a request to the Medical Officer to examine them and get their blood samples. On 19.12.1998, A.S.I. Mr. Gavit arrested the accused No.1 Keshav under a panchanama and he was also sent to the said hospital for getting his blood sample. He recorded the statement of some more witnesses. On 20.12.1998, in the course of interrogation, accused No.1 Keshav disclosed information regarding the weapons used in the crime and the clothes which he was wearing at the time of commission of the offence. He drew a memorandum panchanama and in pursuance of the same, discovered from the house of accused a shirt and pant belonging to the accused and a sword stick. All these articles were concealed in an aluminium box lying on the shed under a panchanama (Exh.21). On 23.12.1998, he arrested accused No.4 Shantaram. On 27.12.1998, he sent the clothes and other articles as well as blood samples to the Chemical Analyser alongwith his forwarding letter (Exh.40). On 9.1.1999, he recorded a statement under Section 164 of P.W.No.1 Chandrakala and some other witnesses. On 10.1.1999, he recorded a statement under Section 164 of P.W.4-Sanjay. On 18.1.1999, he recorded the

statements of some other witnesses and after completion of investigation he submitted his chargesheet on 15.3.1999.

3. In the course of the trial, the prosecution examined as many as 11-witnesses. The prosecution also produced several documents. The defence did not lead any evidence and the defence taken as seen from the cross examination of the witnesses and the 313 Statement was of total denial. After completion of the trial the Trial Court passed the impugned judgment and order convicting and sentencing the accused as aforesaid.

4. We have perused the record and heard both the parties at length. Briefly stated the argument on behalf of the accused was that the three eye witnesses in the case i.e. P.W.1-Chandrakala, P.W.2-Lakhan and P.W.8 Asha Khakodiya were unreliable witnesses and ought to have been disbelieved. That Chandrakala had admitted that the police had taken 5 to 6 of her thumb impressions on blank papers. That she had further admitted in her cross examination that on the date of the incident she was at the police station only for about two minutes and at that time her thumb impression was

not taken on any paper. He argued that what follows from this that the F.I.R. dated 17.12.1998 said to have been recorded at 5.40p.m. was rendered an unreliable document. It is contended that Chandrakala's statement under Section 164 had been recorded by the police but the prosecution has not produced the same at the time of the trial. That in her cross examination, Chandrakala admitted that she had not mentioned in her 164 statement recorded on 9.1.1999 that she had seen the accused Nos. 2,3 and 4 on the spot or had seen them assaulting the deceased. As regards P.W.4 Sanjay, it was contended that there were several omissions in the evidence which had been proved through the evidence of Police Officer P.W.11 Vasant Ganpat Asher. In so far as P.W.8 Asha Khakodiya is concerned, she had not seen accused No.1-Keshav inflicting stab injuries on the deceased. It was then contended that there was over writing in the post mortem report and this had been done by the doctor to oblige the prosecution and bring the finding of rigour mortis in consonance with a time of death more suitable to the prosecution case. It was contended that the discovery evidence was unreliable because the panch witness had not been able to properly describe the details relating to the house of accused No.1 where

the three articles were discovered. It was contended that the blood group on the sword stick could not be determined and the evidence of finding blood group O of the deceased on the shirt of accused no.1 paled into insignificance because of the infirmities in the discovery evidence relating to the said shirt.

5. The learned prosecutor supported the reasons and findings given by the Trial Court. It was his case that the presence of the eye witnesses on the scene of the offence was natural because they were residents of the said slum. It was contended that even if there were some improvements and exaggerations in the evidence, that by itself should not result in the evidence of these witnesses being discredited in toto. That the presence of the accused was spoken about all the three eye witnesses and two of these eye witnesses had seen accused No.1 Keshav inflicting stab blows on the deceased Pappu. As regards P.W.8 Asha Khakodiya, it was contended that though she did not talk about accused No.1 stabbing deceased Pappu, this was only because she had seen only the earlier part of the incident where all the accused were assaulting the deceased Pappu. It was contended that there were other circumstances

which supported the prosecution story such as discovery of the sword stick and the blood stained shirt at the behest of accused No.1, within a short period of time after his arrest. It was pointed out that the blood found on the shirt of the accused No.1 of the same blood group as that of deceased i.e. of O group. It was pointed out that the blood group of accused No.1 was A group and there was no explanation whatsoever given by accused No.1 about the finding of blood of O Group on his shirt discovered and seized at his behest from his own home.

6. We will now consider the evidence of the first eye witness P.W.1 Chandrakala. Chandrakala states that the deceased Pappu had come to her house at about 4.30p.m. on 17.12.1998. At his request she served him a cup of tea. That time accused No.1 Keshav came to her house, looked into it and then went away. Thereafter, Pappu left her house on the pretext that he was to meet Ratnaparkhi and Gaikwad. Some time, thereafter, one Khakodiyabai (P.W.8), came there and informed P.W.1 that Pappu was being severely beaten. Chandrakala therefore,, went to the spot and tried to intervene . She was threatened by accused No.1 Keshav and she saw

accused No.1 Keshav take out a knife from a sword stick and stab Pappu two or three times. She then rushed to the police station and informed the incident to the police. Though this witness has talked about seeing the fatal assault of deceased Pappu, we would not like to place reliance on the same for the following reasons. Chandrakala is a lady who states about going to the police station and lodging of F.I.R. immediately after the incident. The F.I.R. indicates that the same was lodged at 5.40p.m. In her cross examination, however, this witness stated that on the day of the incident she was in the police station only for a couple of minutes. She volunteered that after informing the incident she left immediately and that thereafter she did not return to the police station. That during the time she was at police station, the police only asked her about her name and did not obtain any thumb impression. That on the next day she had again gone to the police station at 10.a.m., but she had gone there not in connection with the present incident but because of the brother of accused No.1 Keshav had threatened her. On this day also she was at the police station for couple of minutes and contrary to this version she further stated in the cross examination that on the day of

the incident police had obtained her five to seven thumb impressions in the police station. She also stated that on that day when she went to the police station and informed the incident, the police did not obtain her thumb impressions. That her thumb impressions were obtained on a blank papers. Some omissions in her police statement to the effect that deceased Pappu had come to her house and asked her to serve cup of tea, had told her that he was going to meet Ratnaparkhi and Gaikwad were also brought on record and proved. In our view the aforesaid infirm circumstances relating to the testimony of Chandrakala, there is some doubt as to whether the F.I.R. was recorded on 17.12.1998 at 5.40p.m. and about the thumb impression of Chandrakala on the said document being a genuine one.

7. If we keep the evidence of P.W.1 Chandrakala aside we then have version given by P.W.No.4 Sanjay who is son of P.W.1. Sanjay is a boy who was aged about 16 years at the time of incident. He, in his examination in chief stated that at about 4.30p.m. when he was at home, deceased Pappu came to his house and was offered tea. He then left his house saying that he was going to see Mr. Ratnaparkhi and Gaikwad. After

some time Asha Khakodiya (P.W.8) came there and informed them that deceased Pappu was being assaulted. He and his mother went to the spot where the deceased was being assaulted. His mother tried to intervene but was abused by accused No.1 Keshav. Keshav then took out a sword stick and gave three blows on the body of deceased Pappu. His mother sent him to Pappu's house and she went to the police station. No doubt, in the cross examination of this witness certain omissions in his police statement were brought and proved through the police officer P.W.11 P.I. Vasant Asher. The said omissions appears to be only in respect of details. P.W.4 Sanjay did not state before the police that Pappu left his house after saying that he was going to meet Ratnaparkhi and Gaikwad, that he and his mother went behind the house of P.W.8 Asha Ashok Khakodiya, that some people had collected there and they went away when Keshav pushed his mother, that his mother asked him to go to Pappu's house and she went to the police station and he told the incident to Pappu's father and had brought him alongwith Pappu's brother on the spot. In our view, these omissions are not of such a nature as would amount to contradictions. They really pertain not to the meat of the incident but to its details. It appears that police also

recorded the statement of this witness under Section 164 of the Criminal Procedure Code. This witness has admitted that he was taken to the Golf Club and at that time only he had made a statement. He then stated that before his statement was recorded, he had not informed anybody about the incident. It however, appears that his statement appears to be incorrect because police officer has admitted to have recorded the statement of Sanjay much earlier. It appears that this witness, due to lapse of memory forgotten to state as to what he had stated in his statement dated 10.1.1999. Unfortunately, the police officer has not made any reference or produced the statement of this witness under Section 164. This witness has also not given any description about the manner in which the accused Nos. 2,3 and 4 assaulted the deceased. His testimony about accused No.1 however, inflicting three stab blows on the deceased remains unshaken in the cross examination and there is no omission or infirmity in the police statement regarding this part of his testimony.

8. P.W.8 Asha Khakodiya deposed to having seen all the accused beating deceased Pappu with

fist and kicks. She is the person who went to call P.W.1 Chandrakala. However, after returning to the spot, she went to the house and did not come out of the house. The evidence of this witness is however, shaken in so far as accused Nos. 2,3 and 4 are concerned, in so far as statement in her cross examination that she had stated before the police that she had seen the accused Nos. 2,3 and 4 but then again her further admissions that she had not disclosed the names of these accused.

9. Taking an over all view of the matter, we find that the story given by P.W.4, 5 and P.W.8 is consistent about the presence of the accused No.1 Keshav. Sanjay stated that Keshav assaulted the deceased Pappu with a sword stick and he witnessed him giving three blows. This version of P.W.2 Sanjay is corroborated by the medical evidence which indicates that six stab injuries were found at or around the same area between chest and abdomen. One cannot expect a witness to precisely count the number of blows given and just because there were six stab injuries it cannot be said that the medical evidence is destructive of the version given by witness Sanjay. Then again there are other circumstances incriminating accused No.1. On

22.12.1998, the police discovered a blood stained shirt and sword stick at his instance from his house. The blood found on the shirt is of blood group O which is admittedly the blood group of the deceased and differs with the blood group of accused No.1 whose blood is of A group. We do not find any substance in the argument of the defence counsel that since the accused could not give all details regarding the circumstances as found in the house of accused No.1, such as type of lock, if the door had a latch, height of the aluminium box etc. the discovery evidence must be discarded. It may not be possible to remember such details after a long lapse of time and this cannot lead the court to disbelieve the evidence of the panch whose evidence is otherwise acceptable and corroborated by the evidence of the police officer. The accused Keshav has not able to give any explanation regarding the finding of blood group O on his shirt. Even on the sword stick human blood has been found though the group of the blood could not be ascertained. Under these circumstances, we are in agreement with the reasons given by the Trial Court for the conviction and sentencing of accused No.1.

10. In so far as accused Nos. 2,3 and 4 are

concerned, we have pointed out the infirmities and doubts created by the defence in the evidence of the eye witnesses. Even P.W.1 Chandrakala on whom we have not placed reliance for other reasons has admitted in her cross examination that she had not incriminated these accused before Special Judicial Magistrate when her statement was recorded under Section 164 of the Criminal Procedure Code on 9.1.1999. There is no discovery at the behest of any of the i.e. three accused. The police officer has admitted that no identification parade was held. In the circumstances, we are inclined to give the benefit of doubt to accused No.2 Rajendra, accused No.3 Khandu and accused No.4 Shantaram.

11. The net result is that the appeal is partly allowed. The conviction of accused No.1 Keshav Asaram Bansode and the sentence imposed upon him is confirmed.

. The accused No.2 Rajendra Narayan Sonawane, accused No.3 Khandu Dhondiram Dhongade and accused No.4 Shantaram Deoram Gurgude are acquitted of all the offences for which they were charged. The impugned Judgment and order convicting and sentencing them is set aside. They will be entitled

to refund of fine if paid. The accused No.1 will be entitled to set off for the period of imprisonment under gone by him according to law. The impugned judgment and order stands modified accordingly.

(R.M. LODHA, J.)

(R.S. MOHITE, J.)